

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PETER E. NICK,

Appellant,

vs.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13427

Trial Court No. 4BE-15-00234CI

**RESPONSE TO MOTION TO ALLOW APPELLANT'S  
SUPPLEMENTAL BRIEF TO BE ACCEPTED FOR FILING**

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

Nick has asked this court to treat his reply brief as a supplemental brief because in that brief he conceded that the issue before this Court is not, as he had argued in his opening brief, whether there is sufficient evidence to support Nick's claims that his trial attorney was ineffective, but whether the trial court's finding of fact was clearly erroneous. In his reply brief, Nick also contends that the term "consult," with respect to an attorney's duty to consult with a client about filing an appeal, means more than a discussion about a defendant's post-judgment remedies, the likelihood of success, and the potential consequences. [Supp. Br. 2-5] In addition, Nick proposes that this court adopt a rule requiring both a written waiver from the defendant and a

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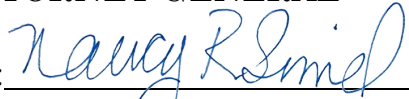
colloquy with the trial court to ensure that a defendant's decision to forego an appeal is knowing and voluntary. [Supp. Br. 5-9]

The latter two issues are legal in nature. Because these issues are legal ones, they do not pertain to the question of whether the superior court's factual finding was clearly erroneous that Nick's trial counsel's testimony about was more credible than Nick's testimony on whether Nick asked for an appeal and on the discussions Nick and counsel had about the possibility of filing an appeal – the question that Nick has said he wants this court to entertain supplemental briefing. Furthermore, the second new issue is one that was not even raised in the superior court. This court therefore should deny Nick's request for supplemental briefing.

In the event this court accepts Nick's reply/supplemental brief for filing, the state asks that it be given an adequate opportunity to file a supplemental brief addressing the new issues.

DATED November 29, 2021.

TREG R. TAYLOR  
ATTORNEY GENERAL

By:   
Nancy R. Simel (8506080)  
Assistant Attorney General

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**CERTIFICATE OF SERVICE AND TYPEFACE**

I, Sylva M. Ferry, state that I am employed by the Alaska Department of Law, Office of Criminal Appeals, and that on November 29, 2021, I emailed a copy of the State's RESPONSE TO MOTION TO ALLOW APPELLANT'S SUPPLEMENTAL BRIEF TO BE ACCEPTED FOR FILING and this CERTIFICATE OF SERVICE AND TYPEFACE in the above-titled case to:

Marilyn J. Kamm  
Attorney at Law  
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I further certify, pursuant to App. R. 513.5, that the font used in the aforementioned documents is Century Schoolbook 13 point.

  
Sylva M. Ferry